

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
NORTH CAROLINA STATE HIGHWAY ) File No. 0006965513
PATROL )
Request for Waiver of Freeze on Inter-Category )
Sharing )

ORDER

Adopted: March 8, 2017

Released: March 8, 2017

By the Acting Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order we grant a request by the North Carolina State Highway Patrol (NC Highway Patrol) for a waiver of the freeze on 800 MHz inter-category sharing to allow it to license a Business/Industrial/Land Transportation (B/ILT) channel for public safety communications.

II. BACKGROUND

2. NC Highway Patrol operates a trunked radio system throughout the state serving its highway patrol operations on numerous Private Land Mobile Radio (PLMR) frequencies in the 806-821/851-866 MHz band (the 800 MHz band). It states that its Hibriten Mountain base station, licensed under call sign WQTA652, serves a number of public safety agencies throughout the state but has recently been unable to handle the volume of radio traffic assigned to it. In fact, NC Highway Patrol states that users from nearby Catawaba County were recently denied use of the site due to its inability to handle additional traffic.

3. Consequently, NC Highway Patrol seeks to license an additional channel at the Hibriten Mountain site so it can return the site to "normal operations" and provide "more efficient dispatching" services to the agencies throughout the state which use its PLMR network to support their public safety

1 North Carolina State Highway Patrol Application, ULS File no. 0006965513 (dated Oct. 1, 2015) (NC Highway Patrol Application). See also Letter from Wayne E. Eberhard, Spectrum Resources Manager, North Carolina Department of Public Safety to Federal Communications Commission (Sept. 23, 2015) (attached to NC Highway Patrol Application) (Waiver Request).

2 NC Highway Patrol is licensed for over 200 PLMR call signs under FRN 0001913888.

3 Letter from Wayne E. Eberhard, Spectrum Resources Manager, North Carolina Department of Public Safety to Federal Communications Commission (Oct. 24, 2016) (attached to NC Highway Patrol Application) at 1 (Supplemental Waiver Statement).

4 Id.

radio communications.<sup>5</sup> It states, however, that it was unable to identify an available channel from the Public Safety Pool for use at the site.<sup>6</sup>

4. Therefore, NC Highway Patrol seeks instead to license a channel from the B/ILT Pool to increase the capacity of its base station.<sup>7</sup> In particular, NC Highway Patrol seeks to license base transmit frequency 856.8125 MHz at its Hibriten Mountain site.<sup>8</sup> It also seeks to license paired mobile transmit frequency 811.8125 MHz for use by associated mobile units operating within forty kilometers of the Hibriten Mountain site.<sup>9</sup>

5. Under Section 90.617(b) of the Commission's rules, channels from the B/ILT Pool are reserved for use by entities performing business related activities.<sup>10</sup> NC Highway Patrol is not eligible to license a channel from the B/ILT Pool since it intends to use the channel for public safety dispatch communications rather than business related communications. Channels from the Public Safety Pool are reserved for agencies like NC Highway Patrol which perform public safety related communications.<sup>11</sup>

6. Nonetheless, Commission rules permit an entity to license a channel outside its pool category through inter-category sharing if the entity demonstrates that no channels in its pool category are available for use.<sup>12</sup> The Commission placed a freeze, however, on inter-category sharing in 1995.<sup>13</sup> NC Highway Patrol therefore needs a waiver of the Commission's freeze in order to license the B/ILT Pool channel specified in its application through inter-category sharing.

7. In support of its waiver request, NC Highway Patrol provides a letter from the Association of Public-Safety Communications Officials, International (APCO), an FCC-certified coordinator of Public Safety Pool channels, stating its search for available channels for the Hibriten Mountain site revealed "there are no public safety or vacated spectrum frequencies that can be assigned due to incumbents being less than 88 km away and/or short spacing issues."<sup>14</sup> NC Highway Patrol also includes a letter from the Utilities Technology Council (UTC), an FCC-certified coordinator of B/ILT Pool channels, stating it concurs with coordination of the B/ILT channel at the Hibriten Mountain site.<sup>15</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Waiver Request at 1. *See also* attachment to NC Highway Patrol Application labeled "Waiver – expanded" (Nov. 17, 2016) (Supplemental Justification).

<sup>7</sup> Waiver Request at 1.

<sup>8</sup> NC Highway Patrol Application.

<sup>9</sup> *Id.*

<sup>10</sup> 47 CFR § 90.617(b) – Table 2. (Channels available to applicants in the Industrial Business Pool, in non-border areas and available for inter-category sharing, but not for SMR or ESMR systems.). *See also* 47 CFR § 90.35 (listing eligibility requirements for entities seeking to license channels from the Industrial/Business Pool); § 90.621(e) (inter-category sharing). *But see infra* n.13 (inter-category sharing freeze).

<sup>11</sup> 47 CFR § 90.617(a).

<sup>12</sup> 47 CFR § 90.621(e). Only channels from the Public Safety or B/ILT Pool are available for inter-category sharing.

<sup>13</sup> *Inter-Category Sharing of Private Mobile Frequencies in the 806-821/851-856 MHz Bands*, Order, 10 FCC Rcd 7350 (WTB 1995) (*Freeze Order*).

<sup>14</sup> Letter from Carol DiCaro, AFC Processor, AFC – APCO's Spectrum Management Division, APCO International to FCC (Sep. 23, 2015) (attached to NC Highway Patrol Application) (APCO Letter). *See also* letter from Carol DiCaro, AFC Processor, AFC – APCO's Spectrum Management Division, APCO International to FCC (Oct. 26, 2016) (attached to NC Highway Patrol Application) (APCO Clarification Letter).

<sup>15</sup> Letter from Kathy Garrett, UTC Spectrum Services, to North Carolina State Highway Patrol (Sep. 28, 2015) (attached to NC Highway Patrol Application) (UTC Concurrence).

8. On December 16, 2016, the Public Safety and Homeland Security Bureau (Bureau) released a public notice seeking comment on NC Highway Patrol's application and waiver request.<sup>16</sup> In the public notice, the Bureau requested comment from any party that would be affected by NC Highway Patrol's use of the B/ILT frequency at its Hibriten Mountain site.<sup>17</sup> The Bureau received no comments.

### III. DISCUSSION

9. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest,<sup>18</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>19</sup> We conclude that NC Highway Patrol has demonstrated that its request should be granted under the first prong of the waiver standard.

10. Section 90.621(e) of the Commission's rules governing inter-category sharing states in pertinent part that B/ILT Pool channels will be available for inter-category sharing if no frequencies are available for licensing to an applicant in its own pool category.<sup>20</sup> To that end, an applicant must include with its application a statement from its frequency coordinator certifying to the lack of available in-pool channels.<sup>21</sup> Furthermore, applicants seeking to license B/ILT Pool channels through inter-category sharing are required to obtain coordination from a frequency coordinator eligible to coordinate channels from the B/ILT Pool.<sup>22</sup>

11. We find NC Highway Patrol satisfies the provisions of Section 90.621(e). Its frequency coordinator, APCO, states "there are no public safety or vacated spectrum frequencies that can be assigned" at NC Highway Patrol's Hibriten Mountain site due to "short spacing issues."<sup>23</sup> APCO attached a frequency search to the application to support its statement regarding the lack of available in-pool channels.<sup>24</sup> NC Highway Patrol also includes with its application a letter from UTC, a frequency coordinator eligible to coordinate B/ILT Pool channels, certifying that NC Highway Patrol's proposed operation on the B/ILT Pool channel would comply with Commission rules "with regard to distance separation."<sup>25</sup>

12. Hence, NC Highway Patrol satisfies the requirements of Section 90.621(e) of the Commission's rules as it pertains to licensing of a B/ILT Pool channel through inter-category sharing. In order to grant NC Highway Patrol's application, however, we must determine whether or not it merits a waiver of the 1995 freeze on the acceptance of applications for inter-category sharing.

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<sup>16</sup> *Public Safety And Homeland Security Bureau Seeks Comment on Application and Waiver Request Filed by North Carolina State Highway Patrol to License an 800 MHz B/ILT Pool Channel*, Public Notice, 31 FCC Rcd 13191 (PSHSB 2016).

<sup>17</sup> *Id.* at 13193.

<sup>18</sup> 47 CFR § 1.925(b)(3)(i).

<sup>19</sup> 47 CFR § 1.925(b)(3)(ii).

<sup>20</sup> 47 CFR § 90.621(e)(1).

<sup>21</sup> 47 CFR § 90.621(e)(5).

<sup>22</sup> *Id.*

<sup>23</sup> APCO Letter at 1.

<sup>24</sup> Attachment to NC Highway Patrol Application labeled "Frequency search" (Sep. 23, 2015). *See also* APCO Clarification Letter.

<sup>25</sup> UTC Concurrence at 1.

13. The inter-category sharing application freeze was put into place because Specialized Mobile Radio (SMR) applicants had obtained numerous authorizations through inter-category sharing primarily for channels in the B/ILT Pool, leading to a shortage of B/ILT Pool channels.<sup>26</sup> This, in turn, led to “a dramatic increase” in the number of B/ILT entities seeking to license Public Safety Pool channels through inter-category sharing.<sup>27</sup> Thus, to “ensure that adequate frequencies are made available to public safety licensees”<sup>28</sup> and in recognition that the “Congress also is concerned with the adequacy of spectrum to meet the communications needs of public service agencies,” the Wireless Telecommunications Bureau stemmed the encroachment of B/ILT licensees into Public Safety Pool spectrum by imposing the freeze.<sup>29</sup>

14. To grant NC Highway Patrol a waiver of the inter-category sharing freeze under the first prong of the waiver standard, we must determine whether “the underlying purpose of the [freeze] would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest.”<sup>30</sup> Because the underlying purpose of the freeze was to protect the Public Safety Pool channels against inter-category sharing applications from SMR applicants, we find that applying the freeze to NC Highway Patrol’s application would not serve the purpose of the freeze. We also find that granting NC Highway Patrol’s application would further the public interest by allowing NC Highway Patrol to return its Hibriten Mountain site to “normal operations” in order to provide “more efficient dispatching” to the public safety agencies which use its site for their radio communications.<sup>31</sup> Therefore, consistent with precedent,<sup>32</sup> we grant NC Highway Patrol a waiver of the freeze on inter-category sharing and order that its application be processed accordingly.

#### IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and Section 1.925 of the Commission’s rules, 47 CFR § 1.925, that the waiver request associated with ULS File No. 0006965513 filed by the North Carolina State Highway Patrol, IS GRANTED and the associated application SHALL BE PROCESSED accordingly.

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<sup>26</sup> *Freeze Order*, 10 FCC Rcd at 7351.

<sup>27</sup> *Id.* at 7352.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 7351.

<sup>30</sup> 47 CFR § 1.925(b)(3)(i).

<sup>31</sup> Supplemental Waiver Statement.

<sup>32</sup> *See, e.g., Delaware, State of, Request for Waiver of Intercategory Sharing Freeze in the 800 MHz Frequency Band*, Order, 21 FCC Rcd 6332 (WTB 2006); *Cumberland, County of, Request for Waiver of Intercategory Sharing Freeze in the 800 MHz Frequency Band*, Order, 21 FCC Rcd 9089 (WTB 2006); *Weld, County of, Request for Waiver of Intercategory Sharing Freeze in the 800 MHz Frequency Band*, Order, 28 FCC Rcd 4369 (PSHSB 2013); *Weld, County of, Request for Waiver of Intercategory Sharing Freeze in the 800 MHz Frequency Band*, Memorandum Opinion and Order, 29 FCC Rcd 5748 (PSHSB 2014); *Denver, City and County of, Request for Waiver of Inter-Category Sharing Freeze in the 800 MHz Frequency Band*, Order, 30 FCC Rcd 10680 (PSHSB 2015); *North Carolina State Highway Patrol, Request for Waiver of Freeze on Inter-Category Sharing*, Order, 30 FCC Rcd 10969 (PSHSB 2015).

16. This action is taken under delegated authority pursuant to Section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c) and Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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